IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5382 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BANK OF INDIA - Petitioner(s)
Versus
K.T. MAJOOR MAHAJAN SANGH & 1 - Respondent(s)

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Appearance :

MR PRANAV G DESAI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR AK CLERK for Respondent(s) : 1,
PS GOGIA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/04/2006

ORAL JUDGMENT

1. Rule. Shri A.K.Clerk, learned advocate waives service of rule on behalf of the respondent No.1 and Shri P.S.Gogiya, learned advocate waives

service of rule on behalf of the respondent No.2. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner Bank has challenged the legality and validity of the order passed by the Industrial Tribunal, Rajkot passed below Exh.4 in Reference I.C.NO.1 / 2004 dated 20.2.2006 and being modified by the order dated 24.2.2006.

3. It appears from the record that Reference I.C.No.1/ 2004 with regard to wages etc. is pending between the respondent No.1 and the respondent No.2 before the Industrial Tribunal, Rajkot. The property of the respondent No.2 – Management was mortgaged with the petitioner Bank and the petitioner bank has invoked the provisions of the Securitisation Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “Securitisation Act, 2002” for short) and was selling the property and realizing the amount by following due procedure as required under the provisions of the Securitisation Act, 2002 and the property of the respondent No.2 – Management was put to auction and it is the case on behalf of the petitioner that the amount of Rs.9.51 crores is realized by selling the property of the respondent No.1 – Management. It appears that the respondent No.1 submitted an application below Exh.4 in the pending Reference before the Industrial Court, Rajkot for interim relief restraining the Bank from selling the property of the respondent Management in question and it is the case on behalf of the petitioner that without even joining the petitioner bank as the party to the proceedings, the Industrial Tribunal, Rajkot by ex-parte ad-interim order dated 20.2.2006 restrained the petitioner as well as the

respondent management in any manner whatsoever either by way of sale, transfer and/or assignment and directed to maintain status quo till 3.3.2006. It appears that ultimately the property in question came to be sold by the petitioner bank and an amount of Rs.9.51 crores is realised. It appears that thereafter the petitioner bank submitted an application for joining them as the party as well as for modification of the interim relief and by order dated 24.2.2006 the Industrial Tribunal passed the order directing the petitioner to keep the amount which is realised by selling the property of the respondent – management in a separate account and further passed the order that the respondent No.1 and respondent NO.2 jointly should try to make payment towards the dues of the worker. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri Pranav G. Desai, learned advocate appearing on behalf of the petitioner Bank has submitted that once the petitioner bank has exercised the powers under the provisions of the Securitisation Act, the Industrial Tribunal ought not to have passed any order and in fact, if the respondent No.1 Union is aggrieved on behalf of the workers, then the proper remedy is to challenge the action of the petitioner bank before appropriate forum as required under the provisions of the Securitisation Act, 2002, more particularly, Section-17 of the Act and even unless and until the amount is determined and the rights of the workers are crystallized, the Industrial Tribunal was not required to pass order that the amount which is realised by the petitioner bank by exercising the powers under the Securitisation Act, 2002 is required to be disbursed to the workers. Shri Desai, learned advocate has further submitted that when the

amount is already realised by the petitioner Bank, the same was required to be appropriated towards the dues of the respondent No.2 and the Industrial Tribunal ought not to have passed the order of keeping the said amount in a separate account. He has also further submitted that in fact, as per the affidavit-in-reply filed on behalf of the respondent No.2, the maximum amount due and payable to the workers will be approximately Rs.1.23 crores and therefore, the Industrial Tribunal was not justified in directing to keep the aforesaid entire amount of Rs.9.51 crores in a separate account.

5. Shri A.K.Clerk, learned advocate appearing on behalf of the respondent No.1 has also made number of submissions on merits and has disputed that the dues of the workers would not be Rs.1.23 crores only. According to him, the dues of the workers would be more than Rs.10.00 crores.

6. However, after arguing the matter by the learned advocates appearing on behalf of the parties, there is consensus between the parties that the respondent No.1 Union would challenge and/or initiate the proceedings before the Debt Recovery Tribunal (“DRT” for short) challenging the action of the petitioner bank under the Securitisation Act and will also pray for an appropriate order / interim order and that let Rs.7.00 crores be appropriated by the petitioner bank out of the sale proceeds of Rs.9.51 crores and let an amount of Rs.2.51 crores be kept with the petitioner bank in a separate account without prejudice to the rights and contentions of all the parties and subject to the order that may be passed by the DRT in proceedings that may be initiated by the respondent No.1 Union challenging the action of the petitioner Bank under the Securitisation Act. Under the circumstances, the following order is passed.

7. The respondent No.1 may initiate appropriate proceedings before the DRT challenging the action of the petitioner bank taken under the provisions of the Securitisation Act and the same may be dealt with in accordance with law and on merits after hearing all concerned parties. Out of the total sale proceeds of Rs.9.51 crores realised by the petitioner bank, an amount of Rs.7.00 crores is permitted to be appropriated by the petitioner bank towards the dues of the respondent No.2 and let the balance amount of Rs.2.51 crores be with the petitioner bank in a separate account. The aforesaid arrangement would be without prejudice to the rights and contentions of all the parties and subject to the order that may be passed by the appropriate forum inclusive of the DRT in proceedings that may be initiated by the respondent No.1 before the DRT challenging the action of the petitioner bank taken under the provisions of the Securitisation Act, 2002. The impugned orders dated 20.2.2006 and 24.2.2006

passed by the Industrial Tribunal, Rajkot passed below Exh.4 passed in Reference I.C.No.1 of 2004 stand modified to the aforesaid extent.

8. Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

[M.R.Shah, J.]

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